

Cases (Cont'd.)Pages

Crain v. United States,
162 U.S. 625 (1896)

11

Curtis Publishing Co. v. Butts
388 U.S. 130, 143 (1967)

22, 25

De La Rosa v. Credit Bureau
of Santa Clara County,
#7773, San Benito County
Superior Court

27

Equitable Life Assurance Soc.
of U.S. v. Mercantile Commerce
Bank & Trust Co.,
143 F.2d 397 (8 Cir.1944)

22

Everhart v. State Life Ins. Co.,
154 F.2d 397 (7 Cir.1946)

22

Fay v. Noia,
372 U.S. 391 (1963)

22

Federal Deposit Insurance Corp.
v. Steinman,
53 F.Supp. 644

36

Garvey v. Blatchford Calf
Meal Co.,
119 F.2d 973 (7 Cir.1941)

20

Goldberg v. Kelly,
397 U.S. 254 (1970)

33

Griffin v. Illinois,
351 U.S. 12, 16 (1956)

14

Helvering v. Ethyl D Co.,
70 F.2d 761 (D.C. Cir.1934)

22

Cases (Cont'd.)Pages

Higgins v. United States,
207 F.2d 819 (D.C. Cir.1953)

35

Johnson v. United States,
318 U.S. 198 (1943)

11

Johnson v. Zerbst,
304 U.S. 458 (1939)

18, 21, 22,
34, 37, 39,
40

Madsen v. Travelers Ins.Co.,
52 F.2d (8 Cir.1931)

21

Mullane v. Central Hanover
Trust Co.,
339 U.S. 306

12

Northwest Creditors Service
v. Chapman,
#196863 (1970)

27

Ohio Bell Telephone Co. v.
Public Utilities Commission,
301 U.S. 292, 307

21

Patton v. United States,
281 U.S. 276 (1936)

11

Sanders v. United States,
373 U.S. 1 (1963)

40

Simons v. United States,
119 F.2d 539 (1943)

15

State Farm Mut. Auto Ins.Co.
v. Retsch,
261 F.2d 331 (10 Cir.1959)

22

Cases (Cont'd.)Pages

Van Bourg v. Nitze, 388 F.2d 557 (D.C. Cir.1957)	22
Viereck v. United States, 318 U.S. 236 (1943)	11
Von Moltke v. Gilles 332 U.S. 708, 723-724 (1948)	39, 40
Wheeler v. Montgomery, C.A. No.48303 (N.D. Calif.1969)	33

Case (Cont'd.)

U.S. District Court, District of Columbia
1958 P. 10, 257 (D.C. Cir. 1957)

U.S. District Court, District of Columbia
1958 P. 10, 257 (D.C. Cir. 1957)

U.S. District Court, District of Columbia
1958 P. 10, 257 (D.C. Cir. 1957)

U.S. District Court, District of Columbia
1958 P. 10, 257 (D.C. Cir. 1957)

TABLE OF AUTHORITIES CITED

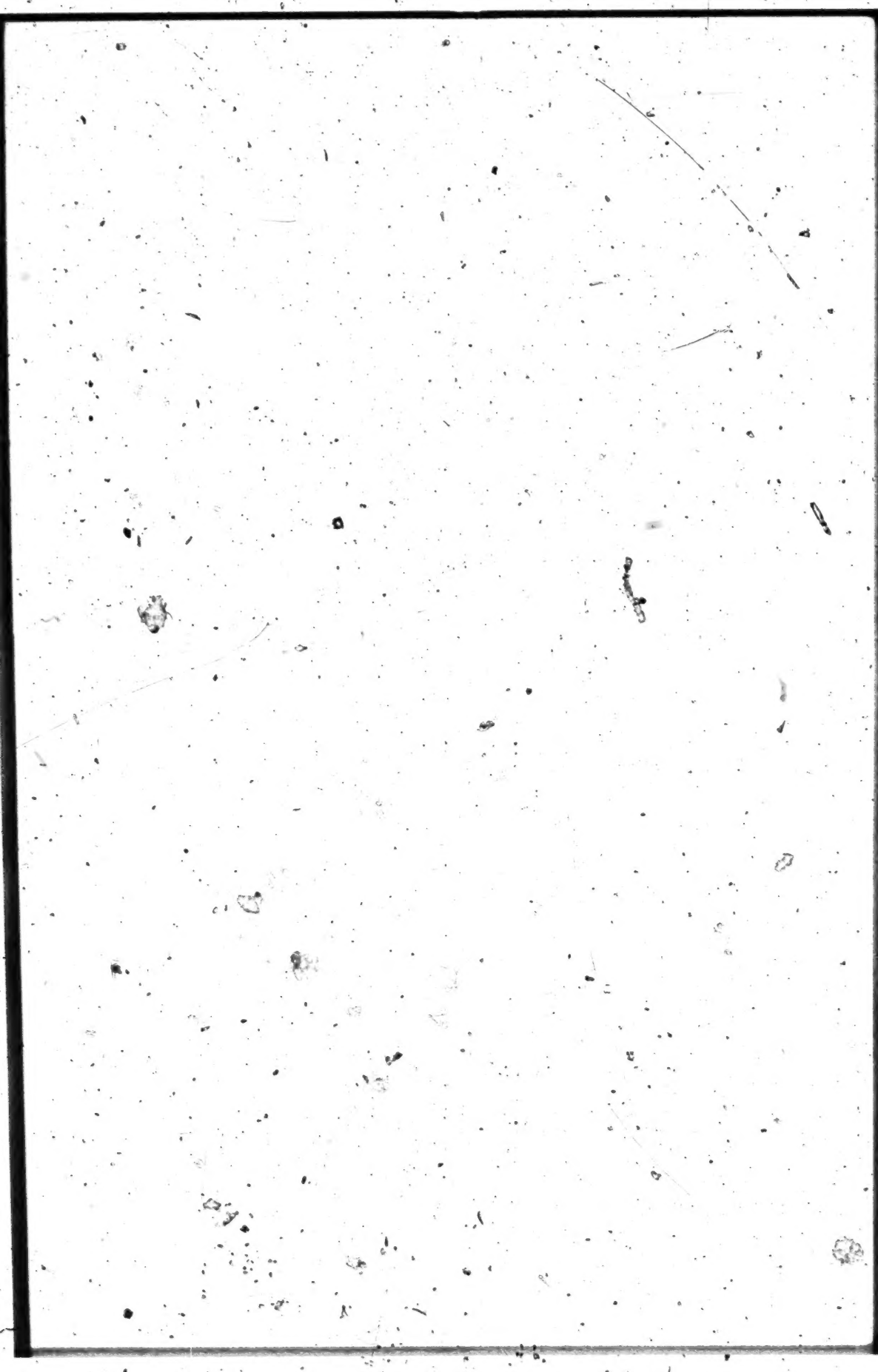
<u>Statutes</u>	<u>Pages</u>
15 U.S.C. 1601 (Truth-in-Lending Act)	29
12 C.F.R. 226.1 (Regulation Z)	29
34 Fed. Reg. 8698	30
16 Cal.Admin. C. §600	30
Cal.Bus. & Prof. C. §6850	30
Cal.Bus. & Prof. C. §6947.2	27
Cal.Civ. C. §1750 (Consumers' Legal Remedies Act)	31
Cal.Civ. C. §1801	30
Cal.Civ. C. §1804(c)	7
Cal.Civ. C. §2981	30
Cal.Civ. C. §2983.7	7
Cal.Civ. C. §5117	1
Cal.Civ. C. §5118	2
Cal.C.Civ.Proc. §439	27
Cal.Fin. C. §18003	7
Cal.Fin. C. §22009	7
Cal.Fin. C. §24208	7
Cal.W&I C. §17300	3

TABLE OF CONTENTS

Page	Chapter
1	Introduction
2	Chapter I. The Problem
3	Chapter II. The Method
4	Chapter III. The Results
5	Chapter IV. The Conclusions
6	Chapter V. The Summary
7	Chapter VI. The Appendix
8	Chapter VII. The Bibliography
9	Chapter VIII. The Index
10	Chapter IX. The Glossary
11	Chapter X. The List of Figures
12	Chapter XI. The List of Tables
13	Chapter XII. The List of References
14	Chapter XIII. The List of Abbreviations
15	Chapter XIV. The List of Symbols
16	Chapter XV. The List of Units
17	Chapter XVI. The List of Formulas
18	Chapter XVII. The List of Equations
19	Chapter XVIII. The List of Diagrams
20	Chapter XIX. The List of Photographs
21	Chapter XX. The List of Maps
22	Chapter XXI. The List of Charts
23	Chapter XXII. The List of Graphs
24	Chapter XXIII. The List of Plots
25	Chapter XXIV. The List of Curves
26	Chapter XXV. The List of Surfaces
27	Chapter XXVI. The List of Volumes
28	Chapter XXVII. The List of Areas
29	Chapter XXVIII. The List of Lengths
30	Chapter XXIX. The List of Masses
31	Chapter XXX. The List of Energies
32	Chapter XXXI. The List of Momenta
33	Chapter XXXII. The List of Forces
34	Chapter XXXIII. The List of Pressures
35	Chapter XXXIV. The List of Temperatures
36	Chapter XXXV. The List of Times
37	Chapter XXXVI. The List of Frequencies
38	Chapter XXXVII. The List of Wavelengths
39	Chapter XXXVIII. The List of Amplitudes
40	Chapter XXXIX. The List of Intensities
41	Chapter XL. The List of Fluxes
42	Chapter XLI. The List of Rates
43	Chapter XLII. The List of Efficiencies
44	Chapter XLIII. The List of Coefficients
45	Chapter XLIV. The List of Constants
46	Chapter XLV. The List of Variables
47	Chapter XLVI. The List of Parameters
48	Chapter XLVII. The List of Functions
49	Chapter XLVIII. The List of Operators
50	Chapter XLIX. The List of Derivatives
51	Chapter L. The List of Integrals
52	Chapter LI. The List of Limits
53	Chapter LII. The List of Asymptotes
54	Chapter LIII. The List of Series
55	Chapter LIV. The List of Products
56	Chapter LV. The List of Sums
57	Chapter LVI. The List of Differences
58	Chapter LVII. The List of Ratios
59	Chapter LVIII. The List of Proportions
60	Chapter LIX. The List of Percentages
61	Chapter LX. The List of Fractions
62	Chapter LXI. The List of Decimals
63	Chapter LXII. The List of Powers
64	Chapter LXIII. The List of Roots
65	Chapter LXIV. The List of Logarithms
66	Chapter LXV. The List of Exponentials
67	Chapter LXVI. The List of Trigonometric Functions
68	Chapter LXVII. The List of Hyperbolic Functions
69	Chapter LXVIII. The List of Inverse Functions
70	Chapter LXIX. The List of Special Functions
71	Chapter LXX. The List of Miscellaneous Functions
72	Chapter LXXI. The List of Miscellaneous Operators
73	Chapter LXXII. The List of Miscellaneous Derivatives
74	Chapter LXXIII. The List of Miscellaneous Integrals
75	Chapter LXXIV. The List of Miscellaneous Limits
76	Chapter LXXV. The List of Miscellaneous Asymptotes
77	Chapter LXXVI. The List of Miscellaneous Series
78	Chapter LXXVII. The List of Miscellaneous Products
79	Chapter LXXVIII. The List of Miscellaneous Sums
80	Chapter LXXIX. The List of Miscellaneous Differences
81	Chapter LXXX. The List of Miscellaneous Ratios
82	Chapter LXXXI. The List of Miscellaneous Proportions
83	Chapter LXXXII. The List of Miscellaneous Percentages
84	Chapter LXXXIII. The List of Miscellaneous Fractions
85	Chapter LXXXIV. The List of Miscellaneous Decimals
86	Chapter LXXXV. The List of Miscellaneous Powers
87	Chapter LXXXVI. The List of Miscellaneous Roots
88	Chapter LXXXVII. The List of Miscellaneous Logarithms
89	Chapter LXXXVIII. The List of Miscellaneous Exponentials
90	Chapter LXXXIX. The List of Miscellaneous Trigonometric Functions
91	Chapter LXXXX. The List of Miscellaneous Hyperbolic Functions
92	Chapter LXXXXI. The List of Miscellaneous Inverse Functions
93	Chapter LXXXXII. The List of Miscellaneous Special Functions
94	Chapter LXXXXIII. The List of Miscellaneous Miscellaneous Functions
95	Chapter LXXXXIV. The List of Miscellaneous Miscellaneous Operators
96	Chapter LXXXXV. The List of Miscellaneous Miscellaneous Derivatives
97	Chapter LXXXXVI. The List of Miscellaneous Miscellaneous Integrals
98	Chapter LXXXXVII. The List of Miscellaneous Miscellaneous Limits
99	Chapter LXXXXVIII. The List of Miscellaneous Miscellaneous Asymptotes
100	Chapter LXXXXIX. The List of Miscellaneous Miscellaneous Series

TABLE OF AUTHORITIES CITED

<u>Commentaries</u>	<u>Pages</u>
28 Am.Jur.2d 839-840	25
28 Am.Jur.2d 846-850	9
92 C.J.S. 1055-1060	25
92 C.J.S. 1066-1068	9
Hopson, "Cognovit Judgment: An Ignored Problem of Due Process and Full Faith and Credit," 29 U. Chi. L.R. 111, 126-136 (1961).	19



INTEREST OF THE AMICI CURIAE

I. FACTUAL CIRCUMSTANCES OF AMICI.

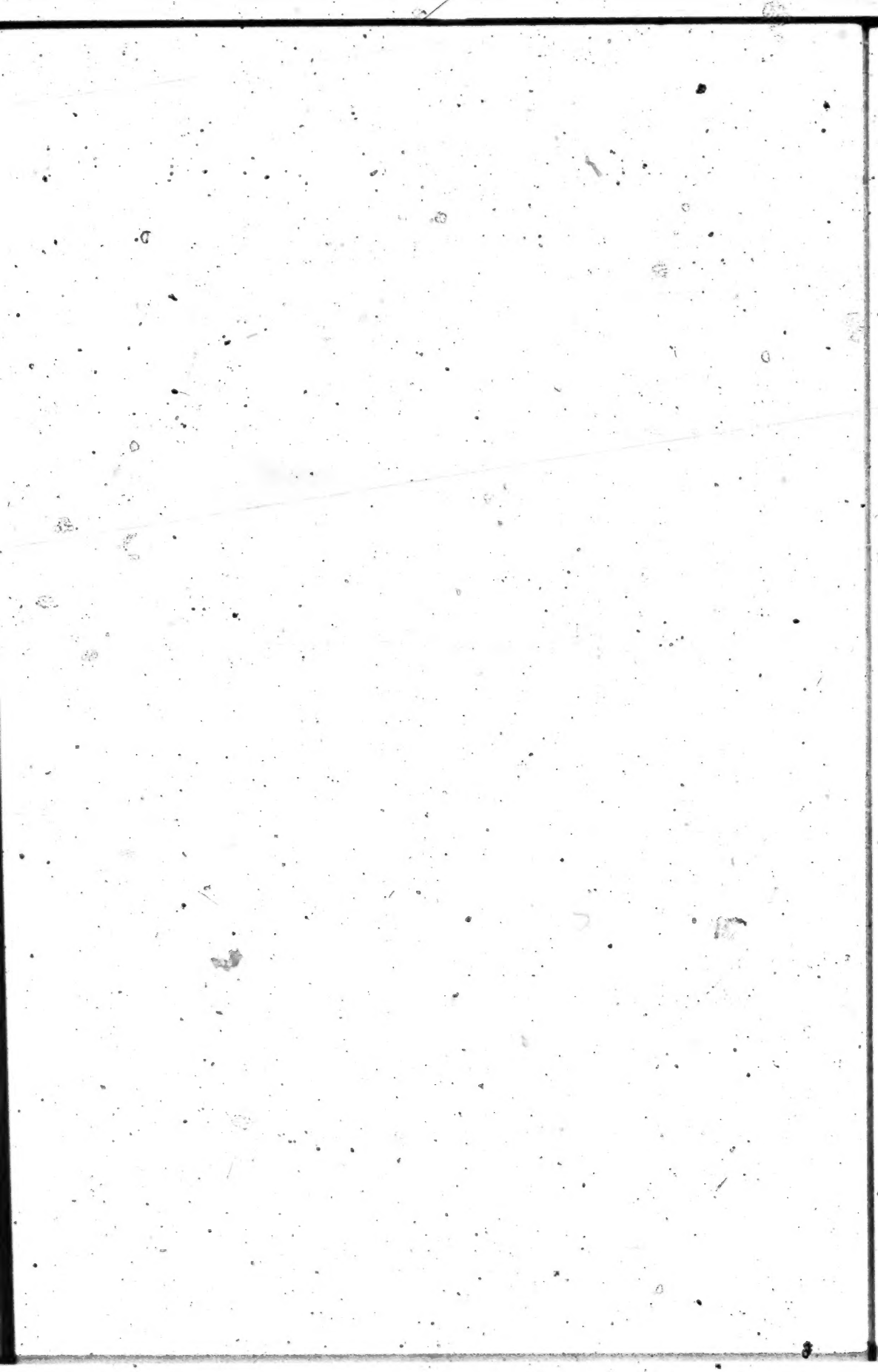
Swarb involves clauses written into consumer contracts confessing judgment thereon.¹ Amici are concerned with confessions not only in that context, but also where signed separately from the contract after an alleged default. Amici Babcock and Nunez are persons who have executed confessions of judgment in favor of a collection agency, H.P. Sears and Company, of Bakersfield, California. Amicus Sophia Babcock is a Greek immigrant who speaks broken English and reads English not at all. Her earnings as a waitress average about \$45 per week.² The debt on which Mrs. Babcock confessed judgment was incurred by her husband long after he deserted her. It is therefore one of which California law absolves her -- although, of course, Sears' employees have never so informed her.³ After its employees visited

1. Hereinafter, such clauses will be described as "cognovits."

2. After the events herein related, amicus Babcock was injured in an accident as a result of which she was unable to continue work. Her sole income at this point derives from Workmen's Compensation payments.

3. "The earnings...of the wife are not liable for the debts of the husband... [except for necessities furnished him] while they are living together..." Cal.Civ.Code §5117 (emphasis added).

(Continued next page)



her home and several times called her late at night, Mrs. Babcock was persuaded to go to Sears' office. In the course of the ensuing lengthy conversation, she was presented with the confession of judgment. She was told only that this was "needed for our files" and that its execution would settle the matter so that she would receive no further phone calls. Two weeks later it was filed and judgment taken against her in the Bakersfield Municipal Court.⁴

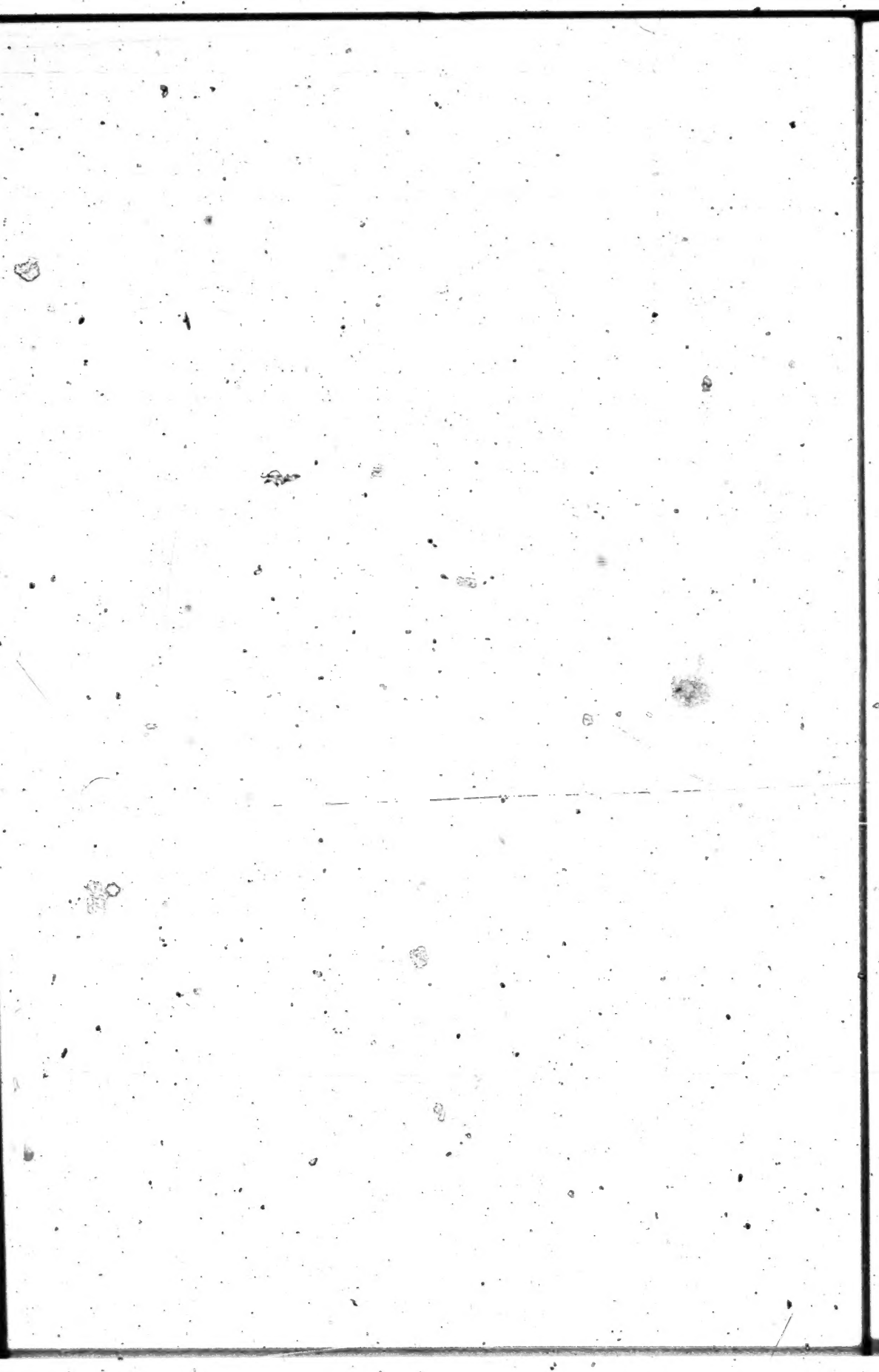
Amicus Nunez was called to an Order of Examination⁵ handled by a lay employee of H.P. Sears, who thereafter demanded that Nunez sign a confession of judgment as to several entirely unrelated debts. Since Mr. Nunez neither speaks nor reads English he was accompanied by his job counselor from the California State Department of Human Resources Development who undertook to translate the confession for him. Unable to translate it because she herself did not understand its meaning, the

(Footnote 3 continued)

"The earnings and accumulations of the wife...while she is living separate from her husband, are the separate property of the wife." Cal.Civ.Code §5118.

4. Research by amici indicates that in the space of a 10-month period H.P. Sears and Co. filed 131 confessions of judgment in the Bakersfield Municipal Court.

5. A California post-judgment procedure whereby a court orders a judgment-debtor to appear and answer questions directed to him by the plaintiff or his representative as to income, assets, etc.



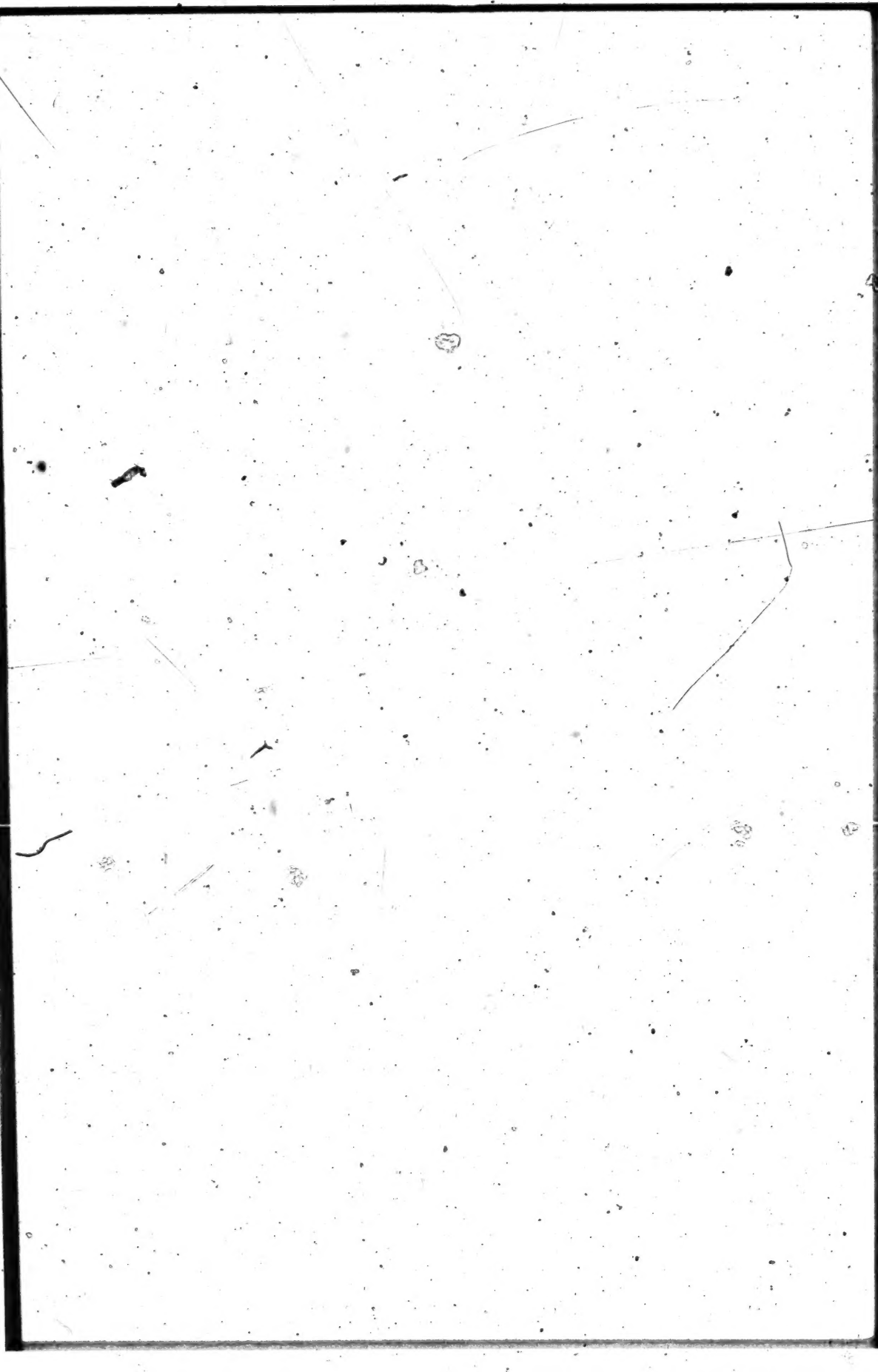
translator asked Sears' employee to explain it to her. He replied, in words or in substance, "I take the Fifth Amendment." He told Mr. Nunez that refusal to sign would result in litigation and taxation of court costs -- but did not mention that two of the three alleged debts were barred by the statute of limitations and the other was one which collection agencies are forbidden by California law to litigate.⁶ Unaware of this, and unfamiliar with American law and procedure, Mr. Nunez signed the confession because (as he explained later to his attorneys) "If you go to court there is lots of trouble and you might have to go to jail." Although Mr. Nunez, who is on welfare, has been unable to pay anything on the alleged obligations -- and has been instructed by his attorneys not to do so -- the confession has never been filed.

6. The confession signed by amicus Nunez is attached hereto as Exhibit B. The two debts in question include the bill from attorneys Donahue and Goodsell which is over three years old and two from the Kern County Hospital, one of which is over six years old.

Cal.Welf.& Inst.C. §17300 requires that county hospital bills be collected by public officials rather than referred to collection agencies. On at least twenty-five occasions attorneys for amici CRLA and/or BAKERSFIELD have interposed demurrers in cases in which H.P. Sears attempted to collect hospital debts and each such demurrer has been sustained upon Sears' failure to file a response.

Finally, under Cal.W. & I. C. §17300 only persons who were not indigent at the time the services were rendered and are not

(Continued next page)



Amici Greater Bakersfield Legal Assistance, Inc., and California Rural Legal Assistance, Inc., (hereinafter BAKERSFIELD and CRLA respectively) are legal services programs funded by the United States Office of Economic Opportunity to provide legal assistance to indigent individuals in the communities they serve. Each program has clients who have executed confessions of judgment in favor of H.P. Sears or other collection agencies. Not one such client received any explanation of its legal significance before signing the confession of judgment, nor were any of them otherwise aware of the significance of what they were signing. In many cases -- including all where H.P. Sears and Company was involved -- the signers were more or less actively misled to believe that they were merely

(Footnote 6 continued)

now indigent are liable for county hospital bills. Moreover suit can be initiated only upon a request by the Board of Supervisors for the county counsel to do so. Thus it has been held that both indigency and the board of supervisors' request must be specifically alleged and proven before judgment can be had for a county hospital bill. Santa Barbara County v. Monical, 10 C.A.3d 249, 254, 88 C.R. 717, 720 (1970).. Needless to say Mr. Nunez' confession contains none of these allegations, perhaps out of oversight, more probably because they could not truthfully be alleged. Whatever the reasons, however, the confession would clearly be legally insufficient to support a judgment -- if there were some way to bring its deficiencies to the attention of the trial court, that is.

complying with some procedural formality of the collection agency.⁷

7. Amici Berkeley Neighborhood Legal Services, Legal Aid Society of San Mateo County, San Francisco Neighborhood Legal Assistance Foundation, Tulare County Legal Services Association, Legal Services Centers of Ventura County, Legal Aid Society of San Joaquin County and Legal Aid Society of Marin County are legal services programs funded by the Office of Economic Opportunity. Although none of them have clients who have executed confessions of judgment in favor of H.P. Sears, they join in the sentiments expressed in this brief.

CONFIDENTIAL
U.S. GOVERNMENT PRINTING OFFICE

II. THE LAW OF CONFESSION OF JUDGMENT IN CALIFORNIA

Although California's law of confession of judgment is conceptually identical to Pennsylvania's, the surrounding procedures are rather different. California law contains no provision requiring notice to the defendant of the entry of a judgment by confession. Only if the defendant becomes aware of its entry can he move to have it set aside, the grounds being excusable neglect, mistake or intrinsic or extrinsic fraud which prevented the presentation of a colorable defense. While at first blush this might seem a far less onerous procedure than Pennsylvania's, its practical effect is much the same, particularly for the indigent defendant. A defendant served in the normal fashion with a summons and complaint may put the matter at issue by stating his defense in a simple answer --, which he may even do orally to the clerk of the court. After judgment has been entered by confession, the defendant (even if he understood the esoteric legal principles involved) will need the aid of an attorney in drafting the papers necessary to set it aside.

California law forbids the inclusion of confessions of judgment in a number of the kinds of contracts involved in Swarb, e.g., retail installment sales,⁸ loans made by personal property brokers,⁹ and other loan companies.¹⁰ (It will be remembered that the confessions of judgment signed by amici were obtained exclusive of, and after the alleged default on, the contracts involved.) On the other hand, landlords, doctors, clinics, hospitals and purveyors of many other goods and services in California are not restricted in requiring confessions in any contracts which they make.

8. Cal.Civ.Code §§1804.1(c), 2983.7(b).

9. Cal.Fin.Code § 22009.

10. Cal.Fin.Code §§24208, 18003.

SUMMARY OF ARGUMENT

I. The right to an opportunity for a hearing is not waivable because that right is of the essence of due process and the adversary system without which a court cannot operate. A procedure which results in denial of any opportunity for a defendant to appear is so inherently subject to abuse as to be constitutionally impermissible. A waiver of procedural rights made long previous to judicial proceedings, and for reasons extraneous to those proceedings, is invalid. Courts exist to dispense justice without regard to wealth or poverty, not to effectuate the distress sale purchase of the procedural rights of the poor by the rich.

II. A confession of judgment cannot evidence a constitutionally valid waiver: (1) because defenses may have arisen since its execution which were not known and understood by the waiving party at that time; (2) because the waiving party may not have understood his extant rights and defenses at the time he executed the confession; (3) because the waiving party may not have understood what the confession was. Since the purpose of a confession is to avoid any appearance by the waiving party, confession is necessarily antithetical to the individualized scrutiny which is required to validate any waiver of appearance or counsel. Pennsylvania has adopted a procedure for accepting waivers of constitutional rights which fails to provide even minimal assurance that such waivers are knowing, understanding and voluntary.

ARGUMENT

I. THE RIGHT TO AN OPPORTUNITY TO APPEAR
WHETHER FOR THE PURPOSE OF DEFENDING OR
WAIVING IS SO FUNDAMENTAL TO DUE PROCESS
THAT IT CANNOT BE WAIVED IN A CONFESSION
OF JUDGMENT.

Courts and commentators have sometimes endorsed the sweeping statement that all constitutional rights are subject to waiver.¹ In considering such statements it is necessary to note the vast differences between the contexts in which they are generally made and the context of confession of judgment. Almost invariably, such statements appear in cases in which a criminal defendant, having acquiesced in a procedure throughout his trial, seeks to object to it after judgment has been rendered against him. Thus the waiver or waivers involved will have been made after full opportunity to appear and defend. Such waivers having been made by the defendant in person, the court will have been able to make some assessment of his English and ability to comprehend our procedures -- unlike a confession, whose signatory may be uneducated and either completely illiterate, or, like amici Babcock and Nunez, illiterate in English. Since such waivers are made in open court before a disinterested judge, there is no question of immediate coercion, mental overbearing or misleading -- unlike the signatory to a confession whose only counsel will have come from adverse parties who, by the very

1. See e.g., 28 Am.Jur.2d 846-850, 92 C.J.S. 1066 - 1068 and cases there cited.

act of obtaining a confession, are insulating their conduct from scrutiny. Such waivers are accepted only after the defendant has received an explanation of the rights he is foregoing -- unlike a confession whose signatory may have no knowledge of his rights at the time of execution and who is waiving an opportunity to present even those defenses which arise long after signing.

Even with all the safeguards which accompany normal (i.e., non-confessional) waivers, the law, as we shall see, is extremely chary of them. Nevertheless, when all those safeguards are present, the defendant is properly precluded from tardily attacking a judgment rendered against him.

"Any other course would not comport with the standards for the administration of criminal justice. We cannot permit an accused to elect to pursue one course at the trial and then, when that has proved to be unprofitable, to insist on appeal that the course which he rejected at the trial be reopened to him. However unwise the first choice may have been, the range of waiver is wide. Since the protection which could have been obtained was plainly waived, the accused cannot now be heard to charge

the court with depriving him of a fair trial. The court only followed the course which he himself helped to chart and in which he acquiesced until the case was argued on appeal."²

Those considerations notwithstanding, it is clear that there are some rights that simply cannot be waived, even with full understanding and capacity and the advice of counsel. Perhaps the most obvious are those created by the Thirteenth Amendment. No one would seriously suggest that a creditor could enforce a contract whereby a debtor pledged himself into peonage or involuntary servitude in the event of a default. The same is true of the prohibition of cruel and unusual punishment. One might imagine a criminal defendant emphasizing his innocence and horror of the crime involved by dramatically volunteering to accept death via the auto-da-fe if convicted. But a court could not subsequently impose such a penalty on the ground that the defendant had waived the Eighth Amendment. And this Court has squarely held that there can be no waiver by failure to object, or a criminal defendant's right not to be tried under an ex post facto law. Crain v. United States, 162 U.S. 625 (1896), disapproved on other grounds Patton v. United States, 281 U.S. 276 (1936).³

2. Johnson v. United States, 318 U.S. 198, 201 (1943).

3. See also Viereck v. United States, 318 U.S. 236, 248 (1943) (judge had responsibility, independent of any objection on part of defendant, to assure fair trial by rebuking prosecutor for raising ethnic prejudice in closing argument.)

[illegible]

SECRET

1. See also Victor v. United States, 341 U.S. 101, 20 L. Ed. 2d 105 (1951) (after ban lifted, U.S. Government was not entitled to recover damages, so award was set aside).

In Boddie v. Connecticut, 39 U.S.L.W. 4294 (1971), this Court seems, although speaking in a very different context, to have disposed of the basic question in this case. At page 4296 of 39 U.S.L.W., the opinion distinguishes between a hearing, which can be waived, and the opportunity for a hearing, which cannot:

"Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State can, for example, enter a default judgment against a defendant who after adequate notice, fails to make a timely appearance... What the Constitution does require is 'an opportunity... '...for [a] hearing appropriate to the nature of the case,' Mullane v. Central Hanover Trust Co., [339 U.S. 306], at p.313. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing..."

The non-waivability of the opportunity for a hearing arises from the fact that our judicial system presupposes (and its operation is dependent upon) an adversary process, the minimum elements of which are embraced in the concept of due process of law. A court which operates without the adversary process, which operates outside the totality of concepts we call due process

1. In Goodie v. Compustat, 39 U.S.C. 1111 (1971), this Court seems, although in a very different context, to have disposed of the basic question in this case. It says: "It is 39 U.S.C. 1111, the basic distinction between a hearing and a decision, and the opportunity to be heard, and the opportunity to be heard."

of law, is a contradiction in terms -- it is not a court. As one decision puts it, a court which operates on confessions of judgment is "a slot machine,"⁴ a collection bureau operating under the guise of a public agency.

The unwaivability of an opportunity to appear is in no whit inconsistent with the many cases holding that a defendant may waive a particular right or procedure even if it is inherent in due process. Whether a defendant in a particular case should exercise a particular right which in the abstract is inherent in civil or criminal due process (e.g., to take the stand in his own defense, or to cross-examine an adverse witness) is obviously a matter best left to his considered judgment. Indeed, it is probably an element of due process that the litigant be allowed to determine for himself whether the exercise of any particular right is necessary or conducive to making his case. That a man may lose a right by deliberately failing to exercise it at the appropriate time is a familiar principle in the law. Cf. Boddie v. Connecticut, supra. This is far from saying that future rights are irrevocably alienated by an act which may have been dictated by economic necessity and which, in any case, occurred long before the litigation between the parties was even contemplated. There is a basic distinction between a waiver made in open court, or after there has been the opportunity to appear, and waivers made in the

4. Columbia Sand and Gravel Co. v. Stresbilt Tile Co., 36 Wash. (D.C.) L.R. 82, 88 (1928).

1. The first step in the process of identifying a problem is to define the problem. This involves identifying the symptoms of the problem and determining the scope of the problem. Once the problem has been defined, the next step is to identify the causes of the problem. This involves identifying the factors that are contributing to the problem and determining the root cause of the problem. Once the causes of the problem have been identified, the next step is to develop a plan to address the problem. This involves identifying the actions that need to be taken to address the problem and determining the resources that will be needed to implement the plan. Once a plan has been developed, the next step is to implement the plan. This involves carrying out the actions that have been identified in the plan and monitoring the progress of the plan. Finally, the last step in the process is to evaluate the results of the plan. This involves determining whether the plan has been successful in addressing the problem and identifying any lessons learned from the process.

2

marketplace. Our Constitution reiterates King John's promise "To no one will we sell ...right or justice." Griffin v. Illinois, 351 U.S. 12, 16 (1956) (plurality opinion of Black, J.). The acceptance of waivers made in the course of litigation, in contemplation of the judicial process and for the purpose of obtaining some advantage therein, does not breach that promise. But surely a court is selling justice when it accepts a waiver made in the marketplace for the purposes of the marketplace -- a waiver obtained as part of the price of the goods or an opportunity to redeem a default. A simple illustration will suffice: Could any court properly give recognition to a provision in a consumer contract that, in the event of litigation, the buyer may not cross-examine the witnesses presented by the seller? Obviously not, for, unlike the marketplace, access to the essentials of justice is not determined by the respective capital accumulations of the parties. Courts exist to dispense justice without regard to wealth or poverty, not to effectuate the distress sale purchase by the rich of the procedural due process rights of the poor.

The many cases holding that a criminal defendant may, at time of trial and after full opportunity for advice of counsel, forego any of his procedural due process rights do not support the proposition

that a defendant may forego the adversary process itself by confessing judgment.⁵

5. The language of the Court of Appeals for the Ninth Circuit in Simon v. United States, 119 F.2d 539 (1941) seems pertinent:

"Defendant urges, however, that he has not been accorded due process. As we have said above, the jurisdiction of the court to try the case is subject to the controlling provisions of the Constitution. The Fifth Amendment to the Constitution provides that no person shall be deprived of life, liberty, or property, without due process of law. We take it that any waiver of the defendant would be ineffectual if it went so far as to deny him due process of law.

"Due process of law in a criminal proceeding has been defined as consisting of 'a law creating or defining the offense, an impartial tribunal of competent jurisdiction, accusation in due form, notice and opportunity to defend, trial according to established procedure and discharge unless found guilty.'" See §579, p. 1171, and cases cited.

12
The defendant may forego the adversary
process by confessing guilt.

The defendant may also forego the adversary
process by confessing guilt.



Again a simple illustration will suffice: Could a state authorize its courts to adjudge criminal cases without ever seeing the defendant, simply on the basis of his confession of judgment presented by a police officer or by a prosecutor? Again the answer is obviously no, despite the potentialities of such a procedure for reducing the congestion of court calendars and the costs of the administration of criminal justice. Such a procedure is so inherently subject to abuse and so inconsistent with the solemn duty of the court to do justice that the mere suggestion of its adoption in the criminal area strikes one as absurd. Why then is it an appropriate device in the adjudication of civil cases? It is surely not because the employees and lawyers of collection agencies and finance companies, etc., are less likely to abuse the court's trust than our police and our public prosecutors. Nor is it because the police would have any greater opportunity to improperly obtain confessions of judgment. Though the police have greater coercive power over a man in their custody, by the same token they have infinitely less opportunity to deceive. The police could not hope to convince a person who had been subjected to extensive interrogation to sign a statement "for our records" as the collection agency convinced amicus Babcock to do. Finally, even were they no more scrupulous than collection agencies, our police must contend with the fact that prisoners will eventually appear before a disinterested judge who will inquire into the circumstances in which they signed any statement the prosecution relies upon. Those who take judgment by confession, on the other hand, need have no similar concern since the

10
The following is a list of the
names of the persons who have
been appointed to the various
positions in the office of the
Secretary of the State of
New York.

very purpose of such a document is to preclude appearance of the civil defendant before a disinterested judge.

It may be suggested that a confession extinguishes no more rights than does a guilty plea or a default in a civil case. But neither a guilty plea nor a default may occur without an opportunity for a hearing.⁶ As a practical matter, judgment by default is justifiable within due process because it is an absolute necessity to the functioning of the system of civil justice. There exists no mechanism to compel civil defendants to appear and make a plea. If a default did not operate

6. As New York's highest court said in refusing Pennsylvania cognovits full faith and credit:

"When contrasted with default or consent judgments, the harshness and unjudicial-like procedure of the cognovit judgment is exposed as egregious. Prior to rendition of a default judgment, process must have been served so that the debtor is made aware of the pending action, and the plaintiff must have filed a complaint pleading a good cause of action [citation]. The contrast is even greater with respect to consent judgments. A judgment by consent as an agreement between the parties at the commencement of an action upon the terms of the judgment is a product of contemporaneous bilateral action." Atlas Credit Corp. v. Ezrine, 25 N.Y.2d 219, 303 N.Y.S.2d 382, 288, 215 N.E.2d 474 (1969).

to assure judgment for plaintiff, every civil defendant would find it cheaper and more convenient to default than to appear, no matter how air-tight his defense.

We recognize that sometimes a default may occur though a defense exists because the defendant is indigent and unable to present it without counsel. Once again, however, default under these circumstances satisfies due process because no other practicable alternative exists. The Constitution has never been interpreted to require states to provide counsel for the indigent civil defendants. In the absence of such a requirement, and of a default judgment procedure, indigents would be wholly exempt from civil justice.⁷

7. Both default and confession involve the possibility that a judgment can be rendered which would not have been rendered had the defendant been advised by counsel at a certain crucial point. The appropriateness of this in the case of a default merely accentuates the difference between a default and a confession. A default is not a waiver, but rather a foreclosure of rights by standing on them. A man may lose rights and defenses of which he is ignorant by inaction and/or inattention. But a waiver consists in the relinquishment only of known rights. Cf. Johnson v. Zerbst, 304 U.S. 458 (1939). A waiver is a gratuity and a gratuity, being a matter of intention, grants only those things which the grantor had in mind when he executed it. To the extent that the grantor was ignorant of his rights, he could not give them away.

In contradistinction, confession of judgment is in no way essential to the operation of civil justice -- as is demonstrated by the fact that confession does not exist in many states and is severely restricted in many others.⁸ The state in recognizing confessions has unnecessarily adopted a procedure which maximizes all the dangers, problems and faults which have been so carefully minimized in connection with defaults. A default is taken under the supervision of a neutral court, after notice which at least acquaints the defendant with his need for advice and allows him to approach the court clerk for some information as to what is happening to him. A confession is taken under the supervision of the adverse party's employees, they alone being available to answer any questions which might be asked. A default occurs with reference to specific causes of action for specific sums concerning specific transactions. A confession is a general license to take judgment for an unspecified sum on the basis of a future default which the defendant will have no opportunity to explain or justify. Finally, a party filing a complaint is deterred from either intentional or negligent misstatement by the possibility that the defendant

8. Cf. Hopson, "Cognovit Judgment: An Ignored Problem of Due Process and Full Faith and Credit," 29 U.Chi.L.R. 111, 126-136 (1961). Professor Hopson finds that, "...only Illinois, Pennsylvania and Ohio specifically allow for and do not, in some way, restrict cognovits. [These states] stand in splendid isolation..." (131) Of course limited confession still exists in some states as it does in California.

may secure counsel either on a fee or on a pro bono basis. A party filing a confession is constrained by no such consideration.

The waivers involved in a confession of judgment are ineffective for the same reasons that the ex post facto clause and the prohibition of cruel and unusual punishment cannot be waived: Such waivers serve no legitimate purpose of the judicial process. The only possible legitimate judicial interest which confession could serve is reducing congested court calendars through the non-appearance of those who have no defense or who wish to present none. But the law forces no man to appear in court. Those who do not wish to present a defense need not do so, and judgment will go by default. Concededly, there may be some few persons who, but for a confession, would go to the expense of presenting a sham defense in hopes of either deceiving the court or wearing the plaintiff down. But that danger is inherent in a system of due process which requires that every defendant have an opportunity to speak before judgment is taken against him. As a danger it scarcely merits comparison with that of intentional or negligent deception by a plaintiff who knows that the defendant will have no opportunity to speak in his own defense.

II. A CONFESSION OF JUDGMENT PROCEDURE DOES NOT PROVIDE SUCH EVIDENCE OF KNOWING AND VOLUNTARY RELINQUISHMENT AS IS NECESSARY TO A WAIVER OF VITAL DUE PROCESS RIGHTS.

Assuming, arguendo, that the opportunity for a hearing may be waived at all, the question becomes whether confession can constitute an effective vehicle for such waiver. Courts "do not presume acquiescence in the loss of fundamental [constitutional] rights."⁹ Indeed they will "indulge every reasonable presumption against [such] waiver..."¹⁰ In consequence, the burden of proof must always be borne by the party alleging the waiver.¹¹

In the context of the due process clause, waiver consists in "the intentional relinquishment of a known right

⁹Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292, 307 (1967), Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

¹⁰Aetna Insurance Co. v. Kennedy, 301 U.S. 389, 393 (1937), Johnson v. Zerbst, supra.

¹¹Buder v. Fiske, 174 F.2d 260 (8 Cir.1949), Garvey v. Blatchford Calf Meal Co., 119 F.2d 973 (7 Cir.1941), Madsen v. Travelers Insurance Co., 52 F.2d 75 (8 Cir.1931), and cases there cited.

IN A COURT OF JUDICATURE
THE FOLLOWING CASES WERE
PRESENTED FOR THE
CONSIDERATION OF THE
JURY

1. The first case was
presented by the
prosecution and was
in the nature of a
charge of murder.
The evidence showed
that the defendant
had been seen on the
night of the crime
at the place where
the crime was
committed. The
evidence was
sufficient to
show that the
defendant was
guilty of the
crime.

2. The second case was
presented by the
prosecution and was
in the nature of a
charge of murder.
The evidence showed
that the defendant
had been seen on the
night of the crime
at the place where
the crime was
committed. The
evidence was
sufficient to
show that the
defendant was
guilty of the
crime.

3. The third case was
presented by the
prosecution and was
in the nature of a
charge of murder.
The evidence showed
that the defendant
had been seen on the
night of the crime
at the place where
the crime was
committed. The
evidence was
sufficient to
show that the
defendant was
guilty of the
crime.

4. The fourth case was
presented by the
prosecution and was
in the nature of a
charge of murder.
The evidence showed
that the defendant
had been seen on the
night of the crime
at the place where
the crime was
committed. The
evidence was
sufficient to
show that the
defendant was
guilty of the
crime.

5. The fifth case was
presented by the
prosecution and was
in the nature of a
charge of murder.
The evidence showed
that the defendant
had been seen on the
night of the crime
at the place where
the crime was
committed. The
evidence was
sufficient to
show that the
defendant was
guilty of the
crime.

or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (emphasis added).¹²

¹²This classic definition, though pronounced in a case concerning the rights of the criminally accused, appears in virtually every succeeding discussion of waiver both in connection with other constitutional rights and with statutory, common law or contract rights. Cf. Curtis Publishing Co. v. Butts, 388 U.S. 130, 143 (1967) (First Amendment rights), Aetna Insurance Co. v. Kennedy, 301 U.S. 389 (1937) (Seventh Amendment right to trial by jury in civil cases), Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292 (1937) (Due process rights in rate-fixing hearing), VanBourgh v. Nitze, 388 F.2d 557 (D.C.Cir.1957) (Statutory rights in administrative hearing process), Chambers & Co. v. Equitable Life Assurance Co., 224 F.2d 338 (5 Cir. 1955) (Contract rights), Helvering v. Ethyl D Co., 70 F.2d 761 (D.C.Cir.1934) (Statute of limitation governing liability for back taxes). See generally 28 Am.Jur. 2d 836, *et seq.* and 92 C.J.S. 1041, *et seq.* See also Barber v. Page, 390 U.S. 17 (1968), Application of Gault, 387 U.S. 1 (1967), Fay v. Noia, 372 U.S. 391 (1963), Albert v. Joralemon, 271 F.2d 236 (9 Cir.1959), Equitable Life Assurance Soc. of U.S. v. Mercantile Commerce Bank and Trust Co., 143 F.2d 397 (8 Cir.1944), Everhart v. State Life Ins. Co., 154 F.2d 397 (7 Cir. 1946), State Farm Mut. Auto Ins. Co. v. Retsch, 261 F.2d 331 (10 Cir.1959), Cook v. Commercial Cas. Ins. Co., 160 F.2d 490 (4 Cir.1947).

A. NATURE OF THE ERRORS BELOW

To be effective any waiver must meet two tests: (1) The party must have understood that he was waiving something (i.e., that his act was a waiver); and (2) The party must have understood what he was waiving.¹³ Though the court below held that some confessions may not meet the first test,¹⁴ it took no cognizance whatever of the second test.¹⁵ Moreover, it is our contention that the court below failed to recognize an entirely different issue, the inconsistency of confessions with the individualized scrutiny which is prerequisite to judicial acceptance of a waiver of basic due process rights.¹⁶

¹³Because we are primarily concerned with the validity of non-cognovit confessions, we do not separately deal with a third requirement: That the waiver was free and voluntary. The issue of whether a waiver in an adhesion contract can be truly voluntary is dealt with in appellants' brief and the amicus brief of the National Consumer Law Center.

¹⁴See discussion at subsection D of this Part.

¹⁵See discussion at subsections B and C of this Part.

¹⁶See discussion at subsection E of this Part.

Finally, a single uniform error permeates every aspect of the opinion below. That error is the insistence that the plaintiffs factually demonstrate the ineffectiveness of the waiver as to at least a substantial proportion of each of the sub-classes perceived by the court below. On the contrary, however, it is the state's duty to establish a procedure which effectively attempts to assure acceptance of only such waivers as were made knowingly, voluntarily and with untrammelled volition. Had they proven only the bare possibility that some cognovits represented invalid waivers, and that Pennsylvania nevertheless recognized them without any examination whatever, plaintiffs would have made out a prima facie case. It must be remembered that the very purpose, as well as the operation, of confession of judgment is to avoid judicial scrutiny. To justify such a procedure, it was up to the defendants to show not that some, or even most, of the waivers honored without scrutiny were constitutionally effective, but that all of them were. This was not and could not be shown, first, because there is no way short of scrutiny to determine what proportion of confessions of judgment meet constitutional requirements; and second, because the probability is that a large proportion of confessions do not.

B. A CONFESSION CANNOT PROVIDE FOR WAIVER OF AFTER-ARISING RIGHTS AND DEFENSES SINCE THE WAIVING PARTY COULD HAVE NO KNOWLEDGE OF SUCH WHEN HE EXECUTED IT.*

A party can waive only those rights or defenses which he knows himself to have. It is hornbook law that one cannot be held to anticipate and understand rights which are not yet in existence and that, therefore, such rights cannot be waived.¹⁷

Applying those principles to the instant case, it is self-evident that the executor of a confession of judgment cannot have anticipated rights or defenses which arise subsequent to its execution.

¹⁷28 Am.Jur.2d 839-840, 92 C.J.S. 1055-1060; Curtis Publishing Co. v. Butts and Ohio Bell Telephone v. Public Utilities Commission, *supra*. While the lack of knowledge involved in Curtis stemmed from the fact that the rights involved there had not yet been enunciated by this Court, the principles of that case seem equally applicable where the rights are unknown because the facts from which they arose have not yet occurred. Ohio Bell Telephone is even closer since it involved the contention that a company had waived its rights by failing to object at a rate fixing hearing to subsequent confidential consideration by the Commission of evidence not introduced at the hearing. This Court rejected that argument at p.307 of 301 U.S. with the following comment: "As there was no warning of such a course, so also there was no consent to it."

Were every confession of judgment effectuated contemporaneously with its execution this might not be an objection. But a cognovit executed in a contract cannot in good faith be effectuated until something colorably resembling a default occurs--an event which may not take place for months or even years.¹⁸ A similar time lag may exist even where the confession is taken by a collection agency after the default has occurred, as in the cases of amici Babcock and Nunez. The agency might delay filing the confession as part of an agreement to accept installment payments, or simply because it wishes to defer risking court costs until the debtor obtains employment whereupon his wages can be garnished.¹⁹

In the period between the execution of the confession and its filing facts may arise which present potential defenses to the obligation. Without attempting an exhaustive compilation of such defenses we would suggest the following: (1) Complete or partial paying off of the obligation by the defendant; (2) Seller's breach of contract by failure to deliver the goods or services; (3) Timely rescission upon discovery of hidden defects in the goods or services; (4) Seller's breach of warranty by failing to correct defects in the goods or services; (5) Extinguishment of the

¹⁸In some states a confession can be filed immediately after a cognovit is signed, but judgment and execution must await a subsequent pleading alleging default.

¹⁹Although executed on Jan. 20, 1971, amicus Nunez's confession has never been filed.

obligation by a statute of limitations;
 (6) Subsequent conduct by the seller or collection agency which gives rise to a set-off, counter-claim or cross-complaint;²⁰
 (7) Unauthorized practice of law by the collection agency;²¹ (8) Filing of the action in a court which lacks jurisdiction of it.²²

²⁰Under California law, any set-off or claim related to the transaction must be stated in a counter-claim or cross-complaint filed with the defendant's answer. Cal.Code of Civ.Proc. §439. Plaintiff's taking of judgment by confession would presumably extinguish any such counter-claim.

²¹Cal.Bus.and Prof.Code §6947.2. The Sacramento County Superior Court has recently held that unauthorized practice of law constituted a good defense to a suit by a collection agency and has issued a class preliminary injunction on defendant's counter-claim. Northwest Creditors Service v. Chapman, No.196863 (1970).

²²California's Unruh Retail Installment Sales Act's venue provision is jurisdictional. 51 Opinions of the California Attorney General 179 (1969). It is not unknown in California for a collection agency to adopt a deliberate pattern and practice of filing cases in the wrong venue thereby making more difficult the debtor's appearance to defend or claim exemption from wage garnishment. Amicus CRLA recently obtained a very handsome settlement in a class action raising this issue. De La Rosa v. Credit Bureau of Santa Clara County, No.7773, San Benito County Superior Court (execution terminated against class members, named plaintiff obtaining \$2200 actual and punitive damages, \$1400 discovery and other court costs).



Admittedly, a subsequent defense will not arise in every case in which a confession of judgment is filed--probably not even in most such cases. But that is irrelevant. The confession of judgment procedure can constitutionally rest only upon the presumption that in all cases the defendant knew, and intended to waive, all his rights and defenses. The confession of judgment procedure treats alike those cases in which the defendant could not have waived his defenses because they arose only subsequently and those in which no subsequent defenses arose. It provides no mechanism for differentiating these two sets of cases, nor would the procedure suggested by the court below suffice. That procedure entails merely investigating whether the defendant knew what a confession of judgment was when he signed it. But in order to determine whether any defenses arose subsequent to the execution of the confession it would be necessary either to appoint counsel for the defendant or in some other way have a legally competent person scrutinize the course and performance of each contract.

C. THE CONFESSION PROVIDES NO EVIDENCE THAT THE WAIVING PARTY KNEW AND FULLY UNDERSTOOD THE RIGHTS AND DEFENSES AVAILABLE TO HIM AT THE TIME HE EXECUTED IT.

As a confession may involve loss of rights and defenses which arise after its execution, so also may it involve loss of rights or defenses then extant but of which the signatory had no knowledge. The law of consumer transactions and collection is

[illegible]

difficult even for an attorney to understand. It involves knowledge of, and familiarity with, trade practices and the effect upon them of the common law and of statutes themselves highly complex which confusingly and intricately interact with one another. The Federal-Truth-in-Lending Act, and the extensive regulations which have been adopted under it, make some transactions illegal outright and limit others.²³ The Federal Trade Mark and Trade Name Act of 1915 would affect other

²³15 U.S.C. 1601 et seq. and 12 C.F.R. 226.1, the so-called Regulation Z.

Indeed it would appear that amicus Nunez may have a Truth-in-Lending defense to the confession he signed in favor of H.P.-Sears. The terms noted on the fact of the confession (See Exh. B) include an agreement to pay off the supposed obligation in more than four installments. Although collection practices in general are not covered by the Truth-in-Lending Act, Regulation Z provides for a right to rescind and for specific disclosure of the same with regard to any collection arrangement involving more than four installments. Federal Reserve Board Letter No. 328 (May 20, 1970), 4 CCH Consumer Credit Guide §30,383.

The act also provides a right of rescission as to consumer credit transactions in which a security interest is retained or acquired in any real property used as a residence by the consumer. The Federal Reserve Board has interpreted this to apply

(cont'd next page)

transactions. In addition many states have enacted statutes more or less comprehensively governing consumer transactions, and virtually all states have some limitation of usury. For instance, most California retail transactions are governed by the Unruh Retail Installment Sales Act.²⁴ Automobile transactions are further governed by California's Rees-Levering Act.²⁵

Collection agency practices are governed by the Collection Agency Licensing Act,²⁶ the regulations promulgated under it²⁷ and most particularly the

to cognovits and confessions:

"[Since they]...have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding before judgment may be entered or recorded against him, such clauses and provisions in those states are security interests under §226 (z)."--Board Interpretation, May 26, 1969, 34 Fed.Reg. 8698 (emphasis in original)

²⁴Cal.Civ.C. §1801, et seq.

²⁵Cal.Civ.C. §2981, et seq.

²⁶Cal.Bus. Prof. §6850, et seq.

²⁷16 Cal. Adm.C. §600, et seq.

prohibition against unauthorized practice of law by a collection agency.²⁸ Finally, California law makes voidable all transactions which occur as a result of certain specified misleading or otherwise unfair advertising or trade practices.²⁹

It should be evident that few, if any, laymen will be conversant with the defenses with which such legislation may invest them.³⁰ It is self-evident that a confession of judgment where such defenses exist operates as a license to violate the law and that, if generally allowed, confessions in such circumstances would wholly nullify such salutary legislation. It is

²⁸Cal.Bus. & Prof.C. §6947

²⁹Consumers Legal Remedies Act, Cal.Civ.C. §§1750 et seq.

³⁰Thus, for instance, amicus Nunez did not know that his indigency constitutes a full and complete defense to the county hospital bills to which he confessed judgment in Sear's behalf. Cal.Welf. & Inst. Code §17300, County of Santa Barbara v. Monical, 10 C.A.3d 249, 88 Cal.Rptr. 717 (1970). Nor did he know that, by law, such debts can be litigated only by the county's legal officers and that only upon a specifically alleged and proven request by the county board of supervisors. See discussion at n. 6 of Interest of the Amici. By the same token, amicus Babcock did not know that California law absolves her of the debts of her deserting husband with which Sears tried to charge her. See discussion at n. 3 of Interest of Amici.

no answer to say that the confession of judgment is taken as part of a contract for which there is consideration.³¹ For the very purpose of the consumer legislation here in question was to prevent the execution of contracts containing certain provisions, or under certain circumstances. The addition of a confession of judgment clause to such contracts exacerbates rather than rectifies the evils which the legislation sought to obviate.³²

D. LAYMEN, AND PARTICULARLY
THE POOR, MAY NOT UNDERSTAND
WHAT A CONFESSION IS AND/OR
THAT BY SIGNING IT THEY ARE
WAIVING RIGHTS

Confession of judgment is an abstruse legal concept, the nature and consequences of which are clearly beyond the knowledge of the ordinary layman. Nor is the language of a confession of judgment clause likely to provide much enlightenment to its untutored reader. It can not even be

³¹This statement would, in any case, not be applicable to the post-contract confessions executed by amici Babcock and Nunez.

³²Once again, we recognize that in many confession of judgment cases there will be no defense available, whether extant at the time the confession was executed or arising afterward. As previously suggested, whether or not a defense actually exists in any particular case is irrelevant because the procedure of a confession is to accept all waivers heedless of the existence of any unknown defense. See discussion at p. 28 supra.

read by those who, like amici Babcock and Nunez and many other poor persons, are illiterate, functionally illiterate, literate only in another language, or have grave reading problems.³³

³³Attached as Exhibit A to this brief is the sworn affidavit of Frederick B. Gillette, Director of the Santa Clara County California Welfare Department which was filed April 5, 1971, in support of enforcement proceedings in Wheeler v. Montgomery, C.A. No. 48303 (N.D. Calif. 1969). In that affidavit Mr. Gillette discusses the reading and writing skills of a large proportion of welfare recipients.

The Wheeler case concerned the right of welfare recipients to a hearing prior to termination of their benefits. Its companion case before this Court, Goldberg v. Kelly, 397 U.S. 254 (1970), held that a procedure which allows welfare recipients to submit only written (but not oral) objections to termination could not provide an adequate hearing. In so holding, this Court commented:

"Written submissions are an unrealistic option for most recipients who lack the education attainment necessary to write effectively and who cannot obtain professional assistance."

The implications of that statement for the present case are obvious.

THE SECRETARY OF THE ARMY
WASHINGTON, D. C.
JANUARY 1, 1900
SIR:
I have the honor to acknowledge the receipt of your letter of the 29th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Your obedient servant,
J. M. [Signature]
Major General, U. S. Army

In the absence of counsel, a person who is unclear as to what a confession is would naturally tend to make inquiries of the collection agency's employees--as, for instance, did amicus Nunez. But such employees are themselves laymen who may not understand what a confession is and who, in any case, owe first loyalties to their employers. Any advice they give will predictably tend to be either partisan or misleading, or both. Indeed, all that amicus Babcock was told was that "this is for our records;" while the Court below found that "the only explanation given to signers of judgment notes was that they were signing 'a judgment note.'" 314 F.Supp. at 1097-1098. It is not strange, therefore, that neither of the amici knew what they were doing when they signed the confession of judgment.

These circumstances seem to cry out for the application of the rule that courts "indulge every reasonable presumption against waiver of constitutional rights."³⁴ Presuming that a layman signed a confession out of ignorance is more than just a "reasonable" alternative to presuming that he did so knowingly. This is particularly true in non-cognovit cases, those wherein the confession of judgment is entered into after performance of a unilateral contract has already been rendered. As the lower courts have recognized, one factor to be considered in deciding whether a person knowingly

³⁴Aetna Insurance Co. v. Kennedy, 301 U.S. 389, 393 (1937), Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

and understandingly waived his right is what he might have expected to gain and what he might have expected to lose by such waiver.³⁵ Common sense tells us that the fact that a man gains nothing and risks much by waiving his rights--in other words, that it is directly against his self-interest--is the strongest possible evidence that he did not understand what he was doing when he waived them.

What had amici Babcock and Nunez (not to mention the 130 odd other persons whose confessions of judgment H.P. Sears and Co. has filed in a ten month period) to gain by executing them? Certainly not better terms of consumer credit, since none of these confessions was executed as part of a consumer credit transaction. By the same token, the execution of confessions of judgment by these persons was

³⁵Higgins v United States, 207 F.2d 819 (D.C. Cir.1953) (defendant could not have understood that he could refuse to have his room searched since "no sane man who denied his guilt would actually be willing that policemen search his room for contraband which is certain to be discovered."), Cipres v. United States, 343 F.2d 95 (9 Cir.1965). (Since defendant's assertions of innocence were "certain to be exposed as false the moment the bags were opened" she could not have believed that she could refuse a request to search them.)

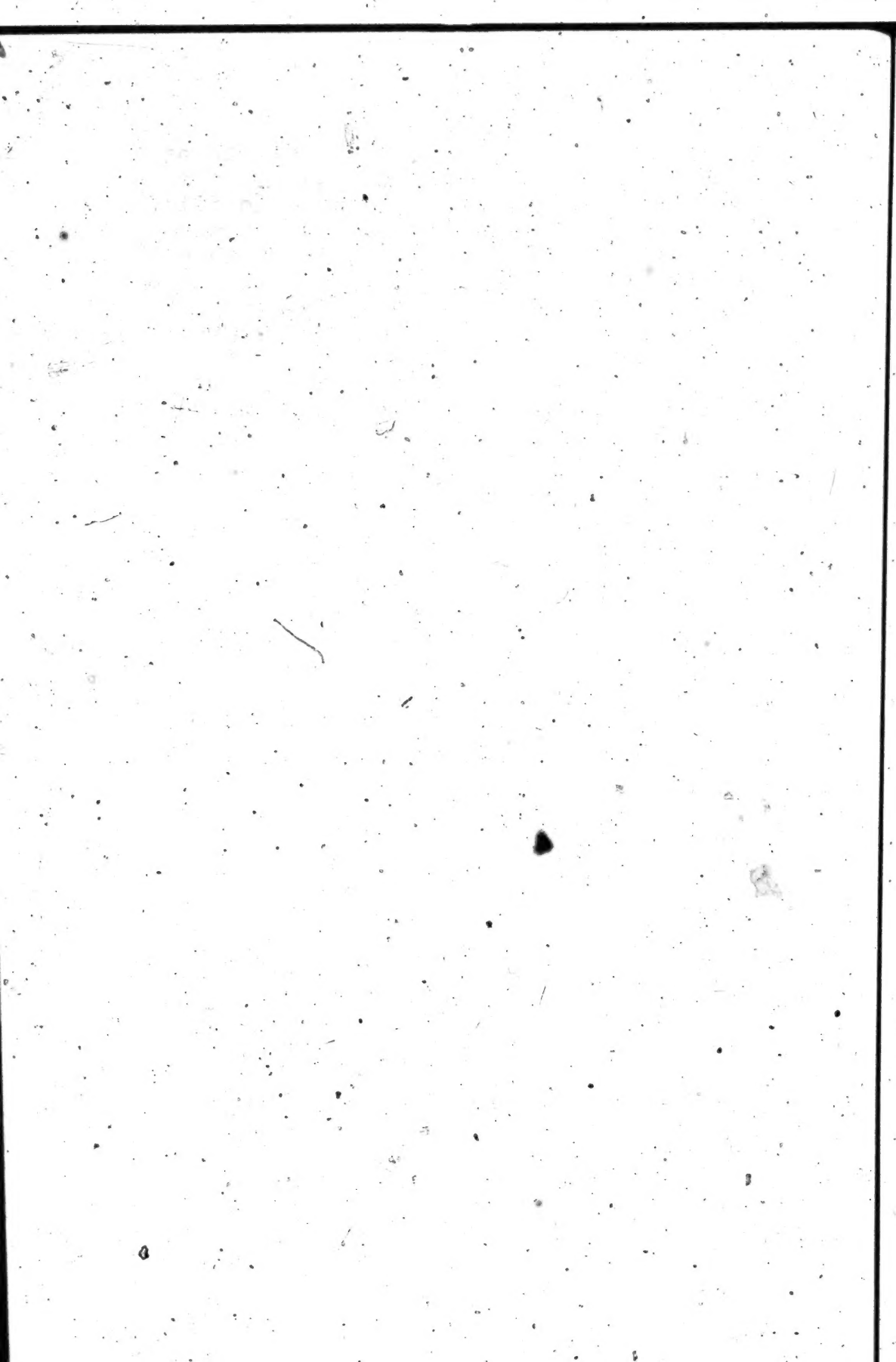
1. The first of these is the fact that the
2. second of these is the fact that the
3. third of these is the fact that the
4. fourth of these is the fact that the
5. fifth of these is the fact that the
6. sixth of these is the fact that the
7. seventh of these is the fact that the
8. eighth of these is the fact that the
9. ninth of these is the fact that the
10. tenth of these is the fact that the

not a prerequisite to the availability of consumer credit to them. Nor was it consideration for Sears' forbearance to file a lawsuit since Sears has made no commitment (whether binding or not) as to this.³⁶ There is but one explanation for amici and those similarly situated signing confessions under these circumstances: They didn't know what they were doing. It follows that their purported waivers of their opportunity to appear was no waiver at all.

E. THE CONFESSION OF JUDGMENT PROCEDURE IS INVALID IN THAT IT DOES NOT PROVIDE FOR THE INDIVIDUALIZED SCRUTINY WHICH IS PREREQUISITE TO THE FINDING OF A WAIVER OF THE OPPORTUNITY TO APPEAR.

The court below determined that most, if not all, of the plaintiffs and those

³⁶Moreover, such forbearance would be of no value to the debtor at all because the confession of judgment makes the filing of a lawsuit unnecessary: the filing of a confession operates as a self-entering judgment, independent, and without necessity, of the filing of a lawsuit. Cf. Federal Deposit Insurance Corp. v. Steinman, 53 F.Supp. 644, holding that confessions are not "suits of a civil nature" as defined in the F.R.Civ.P.: "The right to enter judgment upon a confession contained in an instrument is a common law right which may be exercised without the necessity of suit, i.e., service of process, pleading and judicial determination."



they were found to represent did not understand what a cognovit was. On the basis of that finding it struck down Pennsylvania's confession of judgment laws as applied, but refused to enjoin their application to classes of persons which it deemed to be differently situated. Without delving into the validity of that factual conclusion, it is respectfully suggested that the learned judges misconceived the issue before them. That issue was not whether one or another plaintiff or person represented thereby had or had not understood what he was signing. Rather, at issue is whether Pennsylvania has adopted a constitutionally adequate procedure for determining whether there has been a waiver of the right to due process of law. It is submitted that, had the court below understood its mission in this light, it could only have resolved that question in the negative. For unquestionably the confession of judgment procedure does not provide for the kind of individualized scrutiny of waiver which is mandated by the decisions of this Court. That is true of confession of judgment as it is practiced in Pennsylvania, in California or anywhere else, for the whole purpose of confession of judgment is to avoid any and all judicial scrutiny. That purpose, however, runs squarely afoul of the constitutional principles governing waiver of constitutional rights. This Court held as long ago as Johnson v. Zerbst, *supra*, that every purported waiver of the opportunity to appear must be individually scrutinized to determine its constitutional sufficiency:

"The determination of whether there has been an intelligent waiver of right to counsel must

depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." (304 U.S. at 464)

Ten years later, this Court articulated in the following language the duties which a judge must perform before accepting a waiver of counsel and/or a guilty plea:

"We have said: 'The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused--whose life or liberty is at stake--is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. To discharge this duty properly in light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility. To be valid



THE UNITED STATES OF AMERICA
 DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

WATER RESOURCES DIVISION
 RIVER AND WATERSHED MANAGEMENT
 WASHINGTON, D. C. 20250

REPORT OF THE
 NATIONAL WATER RESEARCH INSTITUTE
 ON THE

WATER RESOURCES
 OF THE
 UNITED STATES

IN THE
 YEAR 1960

BY
 THE
 NATIONAL WATER RESEARCH INSTITUTE

OF THE
 UNITED STATES

DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C. 20250

REPORT OF THE
 NATIONAL WATER RESEARCH INSTITUTE
 ON THE

WATER RESOURCES
 OF THE
 UNITED STATES

IN THE
 YEAR 1960

BY
 THE
 NATIONAL WATER RESEARCH INSTITUTE

OF THE
 UNITED STATES

DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C. 20250

such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered.³⁷

This requirement of individualized examination is far more necessary to determine volition and understanding in the case of a confession of judgment than in a waiver of counsel, or even a guilty plea.³⁸

³⁷Von Moltke v. Gilles, 332 U.S. 708, 723-724, (1948) (emphasis added; footnotes omitted.)

³⁸Recognizing that Johnson and Von Moltke are criminal cases, it is nevertheless true that the consequences of a waiver of due process rights in a civil case may be every bit as severe or even more so. Moreover, the standards for waiver of constitutional rights set out in Johnson have been uniformly applied to all waivers, whether civil or criminal in nature. See n.12, supra.

...the ...
...the ...
...the ...
...the ...
...the ...

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf from an old book. The paper has a slightly textured appearance with some minor discoloration and faint, dark markings scattered across its surface. A prominent, thin, dark line runs diagonally from the bottom left towards the center. There are also some small, dark, irregular spots and a small, dark, rectangular mark near the top right corner. The overall tone is a warm, off-white or light beige.

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The next step is to collect data. This is done by the investigator who is responsible for the study. The next step is to analyze the data. This is done by the investigator who is responsible for the study. The next step is to interpret the results. This is done by the investigator who is responsible for the study. The next step is to draw conclusions. This is done by the investigator who is responsible for the study. The next step is to report the findings. This is done by the investigator who is responsible for the study. The next step is to discuss the implications. This is done by the investigator who is responsible for the study. The next step is to recommend further research. This is done by the investigator who is responsible for the study. The next step is to conclude the study. This is done by the investigator who is responsible for the study.

[illegible][illegible][illegible]

Such waivers are made orally in open court in the presence of a disinterested judge under circumstances which make immediate physical or mental coercion or overbearing virtually impossible. Without any examination whatever, the judge hearing them would have at least some idea of the defendant's education, whether he speaks English, his innate mental faculties and his sobriety.³⁹ As has been previously suggested, a confession of judgment is so inherently subject to abuse as to make imperatively necessary the kind of detailed examination required by Von Moltke, Johnson, and Sanders, supra. Since the very purpose of confession of judgment is antithetical to this Court's requirement that constitutional waivers be individually scrutinized, confession is necessarily inconsistent with due process of law.

³⁹cf. Sanders & United States,
373 U.S. 1.

1. The first of these is the fact that the
2. Government has not been able to
3. maintain a consistent policy in
4. the past. It has been too
5. often seen to change its mind
6. at the last moment, and this
7. has led to a loss of confidence
8. in its ability to carry out
9. its promises. This is a serious
10. problem, and it must be
11. solved if the Government is
12. to be able to do its job
13. properly. The second of these
14. is the fact that the Government
15. has not been able to get
16. its finances in order. It has
17. been running at a deficit for
18. many years, and this has led
19. to a massive accumulation of
20. debt. This is a serious problem,
21. and it must be solved if the
22. Government is to be able to
23. do its job properly. The third
24. of these is the fact that the
25. Government has not been able to
26. get its policies in order. It
27. has been too often seen to
28. change its mind, and this has
29. led to a loss of confidence in
30. its ability to carry out its
31. promises. This is a serious
32. problem, and it must be solved
33. if the Government is to be
34. able to do its job properly.

CONCLUSION

For the foregoing reasons, the judgment of the District Court should be reversed.

Dated: June 2, 1971.

Respectfully submitted,

DON B. KATES, JR.
LUCY K. McCABE
MARTIN R. GLICK
California Rural
Legal Assistance
1212 Market St.
San Francisco, Ca.

WILLIAM D. SCHUETZ
DAVID L. FREY, JR.
Greater Bakersfield
Legal Assistance
103 Sumner St.
Bakersfield, Ca.

SIMON N. ROSENTHAL
Legal Aid Society
of San Mateo County
2221 Broadway
Redwood City, Ca.

CAROL RUTH SILVER
ALAN KOENIG
Berkeley Neighbor-
hood Legal Services
2229 Fourth Street
Berkeley, Ca.

JAMES H. KOVACS
CECILIA D. LANNON
Legal Aid Society
of Marin County
612 D Street
San Rafael, Ca.

SIDNEY M. WOLINSKY
San Francisco Neigh-
borhood Legal Assist-
ance Foundation
1095 Market St.
San Francisco, Ca.

EARL J. DUNN
DALE H. PARHAM
Tulare County Legal
Services Association
147-1/2 So. K Street
Tulare, Ca.

JOHN A. CHILDERS
DAVID P. SCHWARTZ
Legal Service Center
of Ventura County
631 East Cooper Rd.
Oxnard, Ca.

By: DON B. KATES, JR.

CONCLUSION

For the foregoing reasons, the
Board of the Federal Reserve should be

EXHIBIT A

AFFIDAVIT

STATE OF CALIFORNIA)

) ss.

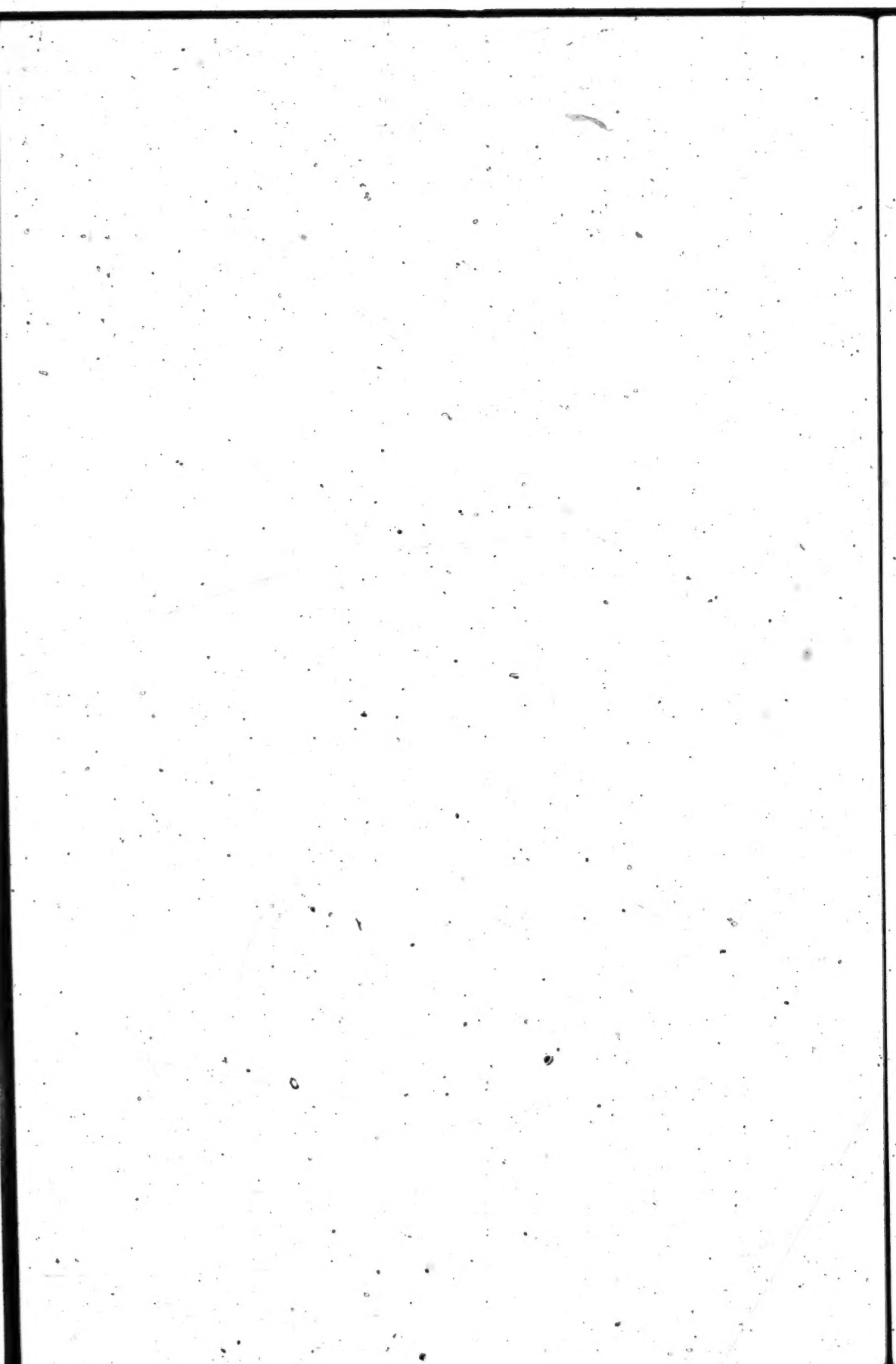
COUNTY OF SANTA CLARA)

I, Frederick B. Gillette, being duly sworn, depose and say: I am presently and for the past six years have been Director of the Santa Clara County Welfare Department. In that capacity I have had occasion to observe and deal with hundreds of welfare recipients and to supervise social workers who deal with thousands.

Many welfare recipients are completely illiterate and many of the rest are "functionally illiterate." By functionally illiterate I mean that while they can painstakingly read and write their names or fill out very simple forms, anything more is completely beyond them. They do not read regularly for business or pleasure and neither reading nor writing are a normal part of their everyday lives. They are incapable either of expressing or understanding in the written word concepts and ideas which might be perfectly clear to them if expressed orally.

Some small number of, but by no means all, welfare recipients are either mentally retarded or are significantly below average intelligence. Even where these recipients do read and write on a level above functional illiteracy, they are incapable of understanding or of easily comprehending and dealing with abstractions and concepts like rights, privileges, duties and responsibilities.

Our "Notice of Action" form (which is used in every instance of a cut-off of welfare grant to inform the recipient thereof) is designed to be as simple as possible; in using and filling out the form, we attempt insofar as possible to describe the action taken simply and concisely. Nevertheless, it has been our experience that welfare recipients often do not understand what the notice of action form is, what specific action was taken with



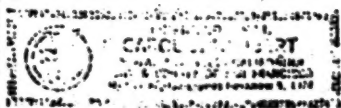
1 regard to them, what the reasons for the actions were, or what
2 rights of appeal they have with regard to the action taken. For
3 this reason the State Welfare Department hearing officials have
4 often accepted appeal requests which said little or nothing more
5 than (in effect): "My aid has been cut off and I want it back."
6 But a recipient who does not know this, and who does not know on
7 what basis action was taken against him or how to express his or
8 her disagreement with that action, would be inclined simply to
9 forego his appeal rights out of frustration and helplessness.
10 Another consideration militating against exercise of the appeal
11 rights is that the very idea of appeal is antithetical to the
12 concepts which many recipients entertain of the welfare system
13 and their relation to it. All too often, recipients are unable
14 to understand that they are entitled to welfare under Federal
15 and State law. Analogizing welfare to private charity, they
16 believe that their benefits exist at sufferance of the officials
17 who distribute them and that they have no right to complain
18 against any action, however arbitrary.

19
20 Dated this 7th day of April, 1971.

21 Frederick B. Gillette
22 FREDERICK B. GILLETTE

23 Subscribed and sworn to before me
24 this 7th day of April, 1971.

25 Carol J. Lambert
26 NOTARY PUBLIC



THE UNIVERSITY OF CHICAGO

1. The first of these is the fact that the

... ..

[illegible]

100

Journal of Management Studies, 20(6), 791-806.

100

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

19

1
1
1
1
1
1
1
1
1
1
2
2
2
2
2
2
2
2
2
2
2

EXHIBIT B

(SPACE BELOW FOR FILING STAMP ONLY)

RICHARD HOOKING
ATTORNEY AT LAW
1403 - 18TH STREET
1007 OFFICE BLDG 2107
BAKER, FIFT O, CALIFORNIA 93308
TELEPHONE 227-8481

*Payments of \$200 per month
beginning July 2, 1971*

*In case payment can not be made
Please call 325-5981 ask for
Ramona L. Lister*

Attorney for _____ Plaintiff

**IN THE MUNICIPAL COURT, BAKERSFIELD JUDICIAL DISTRICT
COUNTY OF KERN, STATE OF CALIFORNIA**

- - 0 - -

HERBERT P. SEARS CO., INC.
a corporation

Plaintiff

vs.

NO.

CONFESSION OF JUDGMENT

MARIO NUNEZ

Defendants

COMES NOW

and confess(es) and agree(s) that judgment may be entered against him/her/them
in the amount of \$ ^{746.57} ~~968.91~~, with interest thereon at the legal rate from
date, which is the amount justly due to and duly assigned to HERBERT P. SEARS
CO., INC., by virtue of the account(s) that follow(s). I/we hereby renew and
reacknowledge the following indebtedness and waive the provisions of the
applicable statute of limitations as of this date according to the California
Code of Civil Procedure Sections 360 and 360.5.

Said accounts are due in the amount and for the nature of
and consideration for the debt set next after the name(s) of the assignor(s)
below:

RECEIVED FOR THE DIRECTOR

RECEIVED FOR THE DIRECTOR
JAN 10 1950
U.S. DEPARTMENT OF THE ARMY
WASHINGTON, D.C.



✓

7

1	ASSIGNOR	DUE FOR:	PRINCIPAL:
2	Fern General Hospital	services rendered(? accts)	\$ 67.00
3	Public Vision	services rendered	21.72
4	Donahue & Goodcell	services rendered	278.79

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26 TOTAL \$ 746.51

27

28 DATE _____

BOOKING
AT LAW
IN STREET
BOX 2287
FIELD,
A 2287

RECEIVED

THE STATE

OF CALIFORNIA

DEPARTMENT OF THE TREASURY

ST. LOUIS

ST. LOUIS

22

1917

10

1917

STATE OF CALIFORNIA

COUNTY OF KERN

SS

being sworn, says: that he/she/they is/are the Defendant(s) in the above entitled action; that affiant(s) has/have read the foregoing confession of judgment, renewal and reacknowledgment of indebtedness, and waiver of the statute of limitations and know(s) the contents thereof, that the same is true of his/her/their own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters, he/she/they believe it to be true. We hereby acknowledge receipt of a copy of this document.

Subscribed and sworn to before me this

19

DOROTHY E. MESSENGER, Notary Public
California, Principal Office in Kern County

1. Being duly sworn, I depose that the following is the true and correct copy of the foregoing contents of

2. the original document, to-wit: (the original document) has been read to the foregoing contents of

3. the original document, to-wit: (the original document) has been read to the foregoing contents of

4. the original document, to-wit: (the original document) has been read to the foregoing contents of

5. the original document, to-wit: (the original document) has been read to the foregoing contents of

6. the original document, to-wit: (the original document) has been read to the foregoing contents of

7. the original document, to-wit: (the original document) has been read to the foregoing contents of

8. the original document, to-wit: (the original document) has been read to the foregoing contents of

9. the original document, to-wit: (the original document) has been read to the foregoing contents of

EXHIBIT C

RECEIVED

**RICHARD MCCOY
ATTORNEY AT LAW
1425 - 15TH STREET
PO BOX 6000
DANVERS, CALIFORNIA 95920
TELEPHONE 327-0421**

'71 MAR 9 AM 8:27

**FILED 3-9-71
BY AM DEP. CLERK**

Agency for Plaintiff

**IN THE MUNICIPAL COURT, DANVERS JUDICIAL DISTRICT
COUNTY OF KERN, STATE OF CALIFORNIA**

**HERBERT P. SEARS CO., INC.
a corporation**

Plaintiff

vs

SOPHIA BABCOCK

Defendants

FEE PAID 4.00

No. 60995

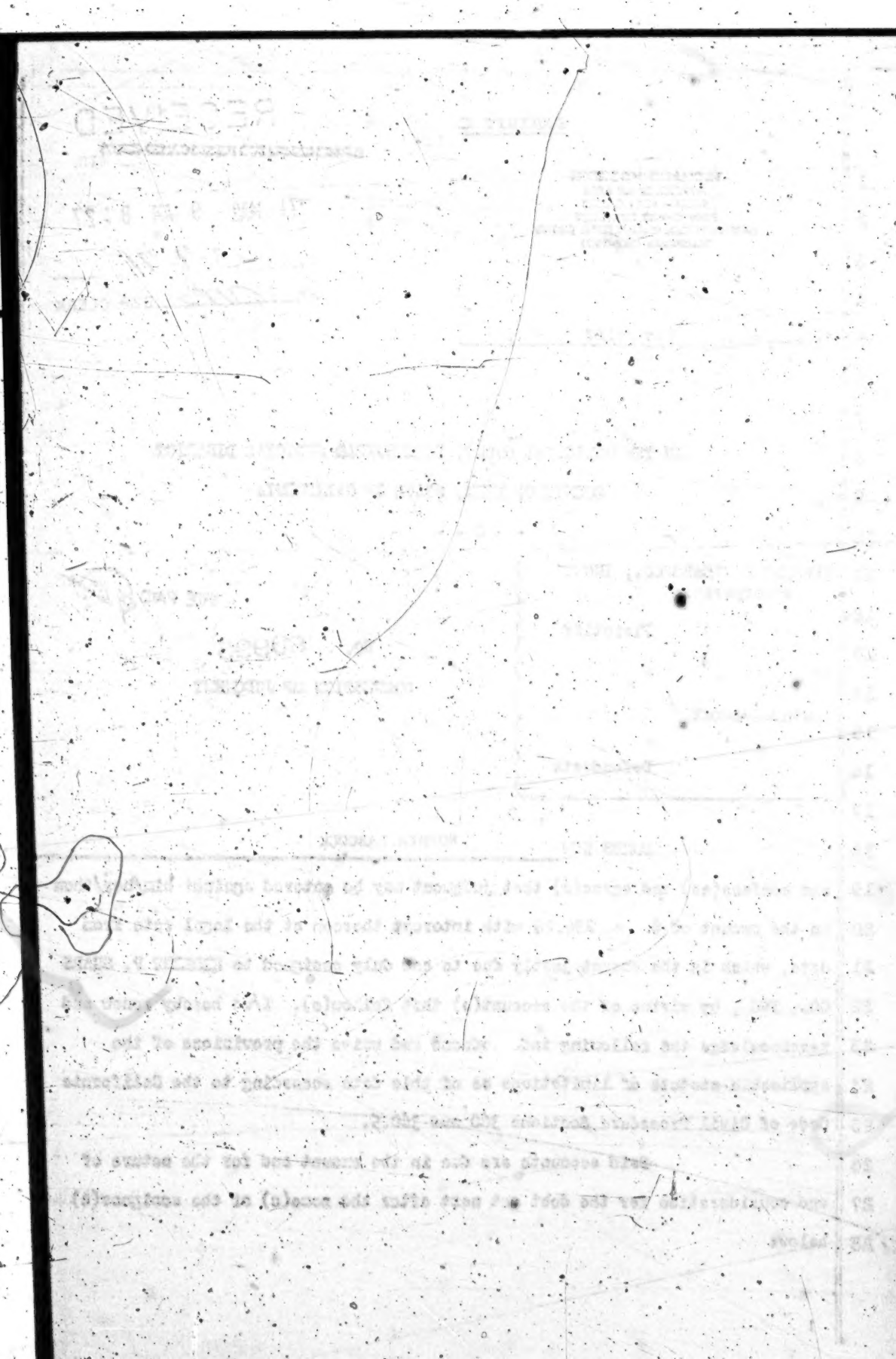
CONFESSION OF JUDGMENT

COMES NOW

SOPHIA BABCOCK

and confess(es) and agree(s) that judgment may be entered against him/her/them in the amount of \$ 234.28 with interest thereon at the legal rate from date, which is the amount justly due to and duly assigned to **HERBERT P. SEARS CO., INC.**, by virtue of the account(s) that follow(s). I/we hereby renounce and acknowledge the following incoveniences and waive the provisions of the applicable statute of limitations as of this date according to the California Code of Civil Procedure Sections 360 and 360.5.

Said accounts are due in the amount and for the nature of and consideration for the debt set next after the name(s) of the assignor(s) below:



1941-1942

1941-1942

1941-1942

1
2 STATE OF CALIFORNIA

3 COUNTY OF KERN

} SS

4 SOPHIA BARCOCK

5 being sworn, says: that he/she/they is/are the Defendant(s) in the above
6 entitled action; that affiant(s) has/have read the foregoing confession of
7 judgment, renewal and reacknowledgment of indebtedness, and waiver of the
8 statute of limitations and know(s) the contents thereof, that the same is true
9 of his/her/their own knowledge, except as to the matters which are therein
10 stated on information or belief, and as to those matters, he/she/they believe
11 it to be true. We hereby acknowledge receipt of a copy of this document.
12
13
14
15
16

SOPHIA BARCOCK

17 Subscribed and sworn to before me this

18 Jan 11 1977

19 Dorothy E. Messenger

20 DOROTHY E. MESSENGER, Notary Public
21 California, Principal Office in Kern County



22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125